

INDIANA LAW

Indiana laws provide that a person presenting a false claim for payment to the Indiana Medicaid program is liable to the state for damages and civil penalties, and provide that Medicaid fraud is a criminal act. In addition, the Indiana False Claims and Whistleblower Protection Act (the “IFCA”), similar to federal law, allows private individuals to file civil lawsuits to recover monetary damages against violators of the laws against false and fraudulent Medicaid claims and protects employees from being discharged or discriminated against because they objected to an act in violation of the IFCA or initiated or participated in proceedings brought under the IFCA.

Indiana False Claims and Whistleblower Protection Act

Indiana Code § 5-11-5.5-2 , among other things, provides that a person who knowingly or intentionally (a) presents a false claim to the state for payment or approval, (b) makes or uses a false record or statement to obtain payment or approval of a false claim from the state or (c) conspires with another person or causes or induces another person to perform an act described in (a) or (b) is liable to the state for a civil penalty of at least five thousand dollars and up to three times the amount of damages sustained by the state, plus the costs of a civil action brought to recover a penalty or damages. The Attorney General and the Inspector General have concurrent jurisdiction to investigate a violation of the IFCA and, if a violation is discovered, may bring a civil action under procedures specified in the IFCA against a person who may be liable for the violation.

A person may bring a civil action for a violation of the IFCA on his own behalf and on behalf of the state. The person bringing the action must serve a copy of the complaint and a written disclosure that describes all relevant material evidence and information the person possesses on both the Attorney General and the Inspector General. The complaint in the civil action remains under seal and is not served on the defendant while the Attorney General and Inspector General determine whether to intervene in the case. If the Attorney General or Inspector General intervenes, they proceed with the action, and if the Attorney General or Inspector General does not intervene, the person who initially filed the complaint may proceed with the action. The IFCA contains detailed provisions regarding participation by the person filing the complaint and dismissal or settlement of the civil action which are beyond the scope of this summary.

If the Attorney General or Inspector General intervened in the civil action and the state prevails, the person who initially filed the complaint is entitled to receive at least fifteen percent and not more than twenty-five percent of the proceeds of the action or settlement, plus reasonable attorney’s fees and an amount to cover the expenses and costs of bringing the action. If the court finds that the evidence used to prosecute the action consisted primarily of specific information contained in a transcript of a criminal, civil or administrative hearing; a legislative, administrative or another public report, hearing, audit or investigation; or a news media report, the share of the person who initially brought the action is reduced to not more than ten percent.

If the Attorney General or Inspector did not intervene in the action, the person is entitled to receive at least twenty-five percent and not more than thirty percent of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

If the person bringing the civil action planned and initiated the violation of the IFCA or was convicted of a crime related to the person's violation of the IFCA, such person is not entitled to any amount of the proceeds of the action or settlement. If the Attorney General or Inspector General did not intervene in the action and the defendant prevails, the court may award the defendant reasonable attorney's fees plus an amount to cover the expenses and costs of defending the action if the court finds that the action is frivolous.

The IFCA includes whistleblower protection provisions that allow an employee to bring suit if the employee has been discharged, demoted, suspended, threatened, harassed or otherwise discriminated against in terms and conditions of employment by his or her employer because the employee objected to an act in violation of the statute or initiated, testified, assisted or participated in an investigation, action or hearing under the statute. The employee is entitled to all relief necessary to be made whole, including reinstatement, two times the amount of back pay owed, interest on back pay and compensation for any special damages including costs and expenses of litigation and reasonable attorney's fees.

Medicaid Fraud

Under Indiana Code § 35-43-5-7.1, a person who knowingly or intentionally obtains payment from the Medicaid program by means of a false or misleading oral or written statement or other fraudulent means commits Medicaid fraud, a Class D felony. If the fair market value of the offense is at least one hundred thousand dollars, the crime is a Class C felony. A person convicted of a Class D felony is subject to imprisonment for a fixed term of between six months and three years, plus a fine of not more than ten thousand dollars. The penalty for a Class C felony is imprisonment for a fixed term of between two and eight years, plus a fine of not more than ten thousand dollars.

References:

False Claims and Whistleblower Protection Act – IC §§ 5-11-5.5-1 through 5-11-5.5-18

Medicaid Fraud – IC § 35-43-5-7.1

Criminal Sentencing – IC §§ 35-50-2-6 and 35-50-2-7